

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2001-506-C - ORDER NO. 2002-280

APRIL 11, 2002

IN RE: Application of SBA Broadband Services, Inc. ) ORDER  
for a Certificate of Public Convenience and )  
Necessity to Provide Local Exchange and )  
Interexchange Telecommunications Services )  
within the State of South Carolina. )

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of SBA Broadband Services, Inc. (SBA or the Company) for authority to provide local exchange and intrastate interexchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2000), and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for

participation in the proceedings. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”).

On March 25, 2002, counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until SBA provided written notice of its intent prior to the date of the intended service. The Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. SBA agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. Counsel for SCTC also included correspondence addressed to the Commission which stated that the Stipulation does not apply to the provision of carrier's carrier services in South Carolina. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation and correspondence submitted by counsel for SCTC attached to the Stipulation are approved and attached as Order Exhibit 1.

A hearing was commenced on March 27, 2002 at 10:30 a.m. in the Commission's Hearing Room. The Honorable William Saunders, Chairman, presided. SBA was represented by John M.S. Hoefer, Esquire. J. Allen Tharp, Vice President of Engineering

and Operations, appeared and testified on behalf of the Company. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

SBA seeks a certificate of public convenience and necessity to provide resold and facilities-based local exchange telecommunications and interexchange services throughout the State of South Carolina. SBA is a Florida corporation that has received authorization to transact business within the State of South Carolina. Tharp presented testimony regarding the Company's managerial, technical, and financial ability to provide telecommunications services in South Carolina.

Upon receiving certification from the Commission, SBA, after construction of necessary plant and facilities, will offer broadband connections from wireless carrier receive antenna sites to carrier Mobile Telephone Switching Office (MTSO) central offices. According to Tharp, in the next five years, SBA plans to build and operate a microwave and fiber system that will be used to transport bulk cellular, PCS and paging carrier communications from carrier customer transmission and reception facilities located at SBA's parent's carrier tower sites to carrier customer MTSO central offices. SBA's parent is SBA Network Services.

According to Tharp, SBA will probably utilize BellSouth as an underlying carrier for the provisioning of the Company's voice services in South Carolina. The Company is authorized to provide voice services in New Jersey, Indiana, Illinois, Missouri, Florida and Wisconsin. The Company has never been denied authority to provide telecommunications services in jurisdictions where SBA has sought to provide

telecommunications services. The testimony reveals that SBA had not provided any intrastate telecommunications services within the State of South Carolina.

The record also reveals that SBA will at all times provide and market services in accordance with current Commission policies. The Company will charge the tariffed rates approved by the Commission. Additionally, Tharp testified SBA intends to market its services through all lawful and appropriate marketing means.

Regarding the Company's managerial experience, Tharp testified that SBA's personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. Steven E. Bernstein is the Chairman, Chief Executive Officer, and founder of SBA. From 1986 to 1989, Bernstein was employed by McCaw Cellular Communications where he was responsible for the development of the initial Pittsburgh cellular system and the start-up of the Pittsburgh sales network. Jeffrey A. Stoops is the Company's President and a director who joined SBA in March 1997. Stoops was appointed Chief Financial Officer of SBA in December 1998; he is also a member of the Florida Bar. Ronald G. Bizick, II is the Company's Chief Operating Officer- United States Development. Michael N. Simkin is the SBA's Executive Vice President – International.

Tharp testified that SBA is financially qualified to provide local exchange and interexchange telecommunications services. As evidence of the Company's financial resources, SBA included its balance sheet and income statement in its Application in addition to its parent corporation's most recently filed SEC 10.Q and a letter of commitment signed by an officer of the Company's parent company.

SBA also seeks waivers of the Commission's regulations. The Company requests that it be exempt from any record-keeping rules or regulations that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). SBA maintains its books of accounts in accordance with Generally Accepted Accounting Principles (GAAP) and the Company asserts that by using GAAP, the Commission will have a reliable means to evaluate SBA's operations. Next, SBA requests that it not be required to publish local exchange directories. SBA asserts that it is not providing local exchange service and thus the Commission should not require SBA to publish a local exchange directory. Additionally, SBA requests a waiver of the Commission's requirement under 26 S.C. Regs. 103-610 to keep its records and reports in the State of South Carolina. According to the testimony, it would be a hardship on SBA to maintain a separate set of books in South Carolina. SBA also requests a waiver of the Commission's requirement under 26 S.C. Regs. 103-612 to file a map showing its certificated area and/or exchange service areas. The Application reveals that SBA's service area will mirror BellSouth's service area.

Additionally, SBA requests that its local exchange service tariff filings be regulated under flexible regulation as approved in Docket Number 97-467-C. Moreover, SBA requests that its interexchange business services, consumer card, and operator service offerings described in its proposed tariff be regulated under alternative regulation as approved by the Commission in Docket No. 95-661-C. During cross-examination by Staff Counsel, Tharp agreed to modify the Company's tariff to ensure that SBA's tariff complies with the Commission's regulations.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. SBA is organized as a corporation under the laws of the State of Florida and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. SBA seeks to provide carriers' carrier, local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. SBA has the managerial, technical, and financial resources to provide the services as described in its Application.

4. The Commission finds that SBA's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2000).

5. The Commission finds that SBA will support universally available telephone service at affordable rates.

6. The Commission finds that SBA will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by SBA "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2000).

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to SBA to provide carriers' carrier services, competitive intrastate non-rural local exchange service and interexchange services in South Carolina. The terms of the Stipulation between SBA and SCTC are approved, and adopted as a part of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation. In addition, SBA is granted authority to provide intrastate interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein.

2. SBA shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. SBA's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for SBA's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, SBA's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff

filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of SBA which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of SBA including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to SBA also.

4. With regard to the interexchange residential service offerings of SBA, the Commission adopts a rate design which includes only maximum rate levels for each tariff



charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. SBA shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. SBA shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2000).

6. If it has not already done so by the date of issuance of this Order, SBA shall file its revised interexchange long distance tariff within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. SBA is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. SBA shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If SBA changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, SBA shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the

name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

SBA shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” form which can be located at the Commission’s website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms) to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. SBA shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. The Company requests a waiver of 26 S.C. Code Ann. Regs. 103-631 (1976 & Supp. 2001). SBA, according to the record, is not providing local exchange service immediately upon the Company receiving certification. We grant the Company’s request to be exempt from publishing a local exchange directory. However, if the Company does begin to offer local services in South Carolina, it shall either publish a local exchange directory or have its customers’ names, addresses, and phone numbers published in the directories of the incumbent local exchange carrier. We also grant the Company’s request to maintain its books in accordance with Generally Accepted Accounting Principles. Additionally, the Company requests a waiver of S.C. Code Ann. Regs. 103-610 (1976) so that the Company can keep its books and records at its principal place of business. We find that an unusual difficulty would be placed on the Company if

it were required to keep its books and records, which are maintained in accordance with Regulation 103-610, within the State of South Carolina; therefore, the Company's request for a waiver of Regulation 103-610 is also granted. Additionally, we grant the Company's request for a waiver of 26 S.C. Regs. 103-612 as the record reveals that SBA's service area will conform to BellSouth Telecommunications, Inc.'s service area. However, the Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

14. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs SBA to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, SBA shall contact the 911 Coordinator in each county, as

well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

15. SBA shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, SBA shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. SBA shall file annual reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The "Annual Report for Competitive Local Exchange Carriers" and the "Annual Information on South Carolina Operations for Interexchange Companies and AOS" form can be located at the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). These forms shall be utilized by the Company to file annual financial information with the Commission. Additionally, pursuant to the Commission's regulations, the Company shall file a "CLEC Service Quality Quarterly Report" with the Commission. The proper form for this report can be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm).

16. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers and incumbent local exchange carriers were

instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001 and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms).

17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)

**MCNAIR LAW FIRM, P.A.**  
ATTORNEYS AND COUNSELORS AT LAW

[www.mcnair.net](http://www.mcnair.net)

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March 19, 2002

**VIA FACSIMILE AND OVERNIGHT MAIL**

Steven J. Hamrick  
Fleischman and Walsh, L. L. P.  
1400 Sixteenth Street, N. W.  
Washington, D. C. 20036

Re: SBA Broadband Services, Inc.  
SCPSC Docket No. 200~~7~~<sup>1</sup>-506-C

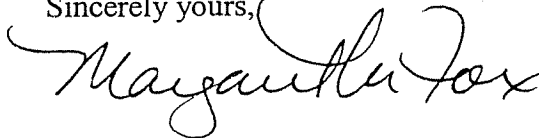
Dear Steve:

This letter will confirm our assurance to you that the South Carolina Telephone Coalition's Stipulation, which was proposed to your client in the above-referenced docket, is not intended to and does not apply to the provision of carrier's carrier services in South Carolina.

We understand that, with this clarification, your client is amenable to signing the stipulation. Once the stipulation is received, the South Carolina Telephone Coalition will withdraw its previously filed testimony in this docket, and will not oppose SBA Broadband's application for certification in South Carolina.

Please forward an executed stipulation to me by facsimile as well as by mail. If you have any questions, please call me.

Sincerely yours,



Margaret M. Fox

MMF:bw

Columbia: 699802

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

Docket No. 2002-506-C

Re: Application of SBA Broadband Services, Inc. )  
for a Certificate of Public Convenience and )  
Necessity to Provide Both Facilities-based )  
and Resold Local Exchange and Interexchange )  
Telecommunications Services in the State of )  
South Carolina )  
\_\_\_\_\_ )

**STIPULATION**

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and SBA Broadband Services, Inc. ("SBA Broadband") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose SBA Broadband's Application. SCTC and SBA Broadband stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to SBA Broadband, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. SBA Broadband stipulates and agrees that any Certificate which may be granted will authorize SBA Broadband to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. SBA Broadband stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. SBA Broadband stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless



and until SBA Broadband provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, SBA Broadband acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. SBA Broadband stipulates and agrees that, if SBA Broadband gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then SBA Broadband will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. SBA Broadband acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and SBA Broadband, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

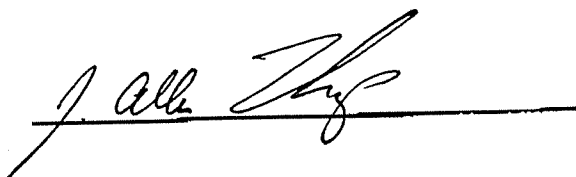
8. SBA Broadband agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. SBA Broadband hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

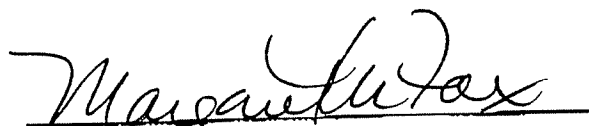
AGREED AND STIPULATED to this 21<sup>st</sup> day of March

2002.

SBA Broadband Services, Inc.:



South Carolina Telephone Coalition:



M. John Bowen, Jr.  
Margaret M. Fox  
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Attorneys for the South Carolina Telephone  
Coalition

## ATTACHMENT A

### South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.  
Chesnee Telephone Company  
Chester Telephone Company  
Farmers Telephone Cooperative, Inc.  
Ft. Mill Telephone Company  
Heath Springs Telephone Company Inc.  
Home Telephone Company, Inc.  
Lancaster Telephone Company  
Lockhart Telephone Company  
McClellanville Telephone Company  
Norway Telephone Company  
Palmetto Rural Telephone Cooperative, Inc.  
Piedmont Rural Telephone Cooperative, Inc.  
Pond Branch Telephone Company  
Ridgeway Telephone Company  
Rock Hill Telephone Company  
Sandhill Telephone Cooperative, Inc.  
St. Stephen Telephone Company  
West Carolina Rural Telephone Cooperative, Inc.  
Williston Telephone Company